IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR.

J U D G M E N T

Radhey Shyam Vs. Brijendra Singh

S.B. Civil Second Appeal No.107/1993 against the judgment & decree dated 11.12.1992 passed by the Additional District Judge No.1, Bharatpur in Civil Regular Appeal No.68/91.

Date of Order ** May 01, 2006

PRESENT
HON'BLE DR. JUSTICE VINEET KOTHARI

Dr. P.C. Jain for the appellant.
Mr. B.L. Mandhana for the respondent.

REPORTABLE **BY THE COURT**:

This is second appeal by the defendant Radhey Shyam son of Badan Singh against the judgment and decree by the two courts below decreeing the suit for specific performance in favour of Brijendra Singh son of Badan Singh, whose step brother defendant Radhey Shyam has challenged the said decree. The first Appellate Court by its judgment dated 11.12.1992 held that plaintiff Brijendra Singh was entitled to specific performance and the main defendant Gajendra Singh son of Vaktavar Singh was bound to execute a sale deed in favour of Arazi khasra No.771 demeasuring 10 Biswa Barani agricultural land situated at village Jahangirpur, Tehsil Nadbai, District Bharatpur in pursuance of the agreement to sell executed by said Gajendra Singh on 12.5.1980 for the sale consideration of Rs.500/- which was paid by the plaintiff Brijendra Singh and possession of the said agricultural land was handed over to the plaintiff but the registered

sale deed was not executed.

When the plaintiff approached the vendor Gajendra Singh for execution of sale deed in respect of the said agricultural land in his favour he refused to do so on the ground that he had since become khatedar of the said agricultural land and had transferred the same by registered sale deed in favour of Radhey Shyam for a sum of Rs.1000/-. The plaintiff immediately filed the suit on 11.10.1982 and the date of registered sale deed in favour of Radhey Shyam is also 11.10.1982. Upon coming to know of the same, the plaintiff immediately amended the suit and impleaded his step brother Radhey Shyam also as defendant in the suit on 15.10.1982. The plaint was contested by the said defendant Radhey Shyam only and he filed the written statement to the plaint and the original vendor Gajendra Singh did not contest the suit, though he appeared as defence witness, Dw.2 before the court prior to his death. It is stated that the said original vendor Gajendra Singh since died in the year 1996 and no steps were taken to bring legal heirs of the said vendor Gajendra Singh on record and accordingly his name was deleted from the array of respondents vide order dated 6.12.2005 on this Court on the request of learned counsel for the appellant Radhey Shyam as the application under Order 22 Rule 4 CPC was not pressed.

A preliminary objection was raised at the time of hearing of this appeal by the learned counsel for the plaintiff-respondent Brijendra Singh and the learned counsel for the defendant-respondent Mr. B.L. Mandhana submitted that the appeal in its entirety had abated with the death of vendor Gajendra Singh and his LRs. having not been brought on record by the appellant Radhey Shyam, as the decree for specific performance was against the

original defendant Gajendra Singh only directing him to execute the sale deed in favour of plaintiff and the co-defendant, lateron joined in the suit Rahdey Shyam could not contest the suit decreed for specific performance particularly the substantial question framed by this Court while admitting this second appeal “whether in want of specific pleading with regard to readiness and willingness of the plaintiff to perform his part of the contract, the suit could be decreed ?” He relied upon the decision of two Judges Bench of Hon'ble Supreme Court in **Jugraj Singh & another Vs. Labh Singh & others** [AIR 1995 SC 945]; and **Dwarka Prasad Singh & others Vs. Harikant Prasad Singh & others** [AIR 1973 SC 655] in support of his submission. The said preliminary objection was contested by Dr. P.C. Jain learned counsel appearing for the appellant Radhey Shyam and he submitted that the decision of Hon'ble Supreme Court in Jugraj Singh & another Vs. Labh Singh & others (supra) has since been overruled in **Ram Awadh Vs. Achhaibar Dubey** [AIR 2000 SC 860] by a three Judges Bench of Hon'ble Supreme Court and the veracity of the said ratio in Jugraj Singh was already doubted by two Judges Bench of Supreme Court in **Lakhi Ram Vs. Trikha Ram** [AIR 1998 SC 1230] and consequently this was beyond pale of doubt that the plea of absence of readiness and willingness on the part of plaintiff to perform his part of the contract was also available to the subsequent purchaser of the property by a registered sale deed like the present appellant. In view of this the preliminary objection of the plaintiff-respondent to the extent that this plea is not available to the subsequent purchaser cannot be sustained and the same is accordingly overruled, therefore, this will have to be seen on merits as to whether the plaintiff was entitled to a decree of specific performance or not.

Though the present appellant, co-defendant in the suit did not bring on record the alleged registered sale deed under which he claimed title over the said agricultural land through the original vendor Gajendra Singh the trial court had framed specific issue No.4 as to whether the sale deed executed in favour of defendant No.2 Radhey Shyam was valid or not the said issue was also decided in favour of plaintiff and the said sale deed was held to be legal. The trial court held that the prior agreement to sell executed in favour of plaintiff on 12.5.1980 was valid and also that the plaintiff was ready and willing to perform his part of the contract and having paid full consideration of Rs.500/- to the original vendor Gajendra Singh, the plaintiff was entitled to a decree and accordingly the defendant Gajendra Singh was directed to execute the sale deed in favour of plaintiff Brijendra Singh and if he fails to execute the same the plaintiff Brijendra Singh was entitled to get the sale deed executed through court. The trial court also held that the possession of the land in question was that of the plaintiff.

The first appeal filed by the co-defendant Radhey Shyam also failed and the first Appellate Court also held that even though the appellant Radhey Shyam had signed the original agreement to sell dated 12.5.1980 executed by the vendor Gajendra Singh in favour of plaintiff Brijendra Singh even though he may not have signed the same on the same date but he was in the knowledge of the said preceding agreement to sell and, therefore, he could not be said to be bona fide purchaser for consideration without notice and, therefore, his case could not fall within the exception of Section 19(b) of the Specific Relief Act, 1963. Section 19 of the Specific Relief Act, 1963 with the heading of 'relief against parties and

persons claiming under them by subsequent tile' says that “except as otherwise provided by this Chapter, specific performance of a contract may be enforced against:-

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, *except a transferee for value who has paid his money in good faith and without notice of the original contract.*

Dr. P.C. Jain, learned counsel for the appellant, therefore, submitted that since Radhey Shyam was the transferee for value who has paid his money in good faith and without notice of the original contract, as the trial court has not held that his signatures on the original agreement to sell dated 12.5.1980 were on the same date or not, the decree of specific performance cannot be enforced against him. He further submitted vehemently that in the absence of any pleading of readiness and willingness to perform his part of the contract by the plaintiff, the very essential foundation for grant of decree of specific performance was absent and according to provisions of Section 16(c) of the Specific Relief Act, 1963, the said decree could not be granted because according to him the plaintiff had failed to ever and proved that he has performed or has always been ready and willing to perform the essential terms of contract which are to be performed by him, other than terms the performance of which has been waived by the defendant and accordingly he prayed that the present second appeal deserves to be allowed at the instance of purchaser Radhey Shyam and the decree and judgment of both the courts below deserve to be set aside.

This was vehemently contested by the learned counsel for the plaintiff Brijendra Singh Mr. B.L. Mandhana who

submitted that not only the said defendant Radhey Shyam had wrongly stated before the court that he was not aware about the pre-existing agreement to sell in favour of his own brother Brijendra Singh as he had signed the said agreement to sell as attesting witness and there was a gap of about two years between the said agreement to sell executed on 12.5.1980 and alleged registered sale deed in his favour executed on 11.10.1982 but had wrongly denied his signatures on the same and even his signatures on vakalatnama given before the court below. He further stated that though the said appellant Radhey Shyam had stated before the court which was also corroborated by the original vendor Gajendra Singh himself who appeared before the court as Dw.1 and Dw.2 respectively that the said land was agreed to be sold to Radhey Shyam for a sum of Rs.2000/-, the said registered sale deed was executed for the sum of Rs.1000/- only and that too there is no evidence that the said consideration of Rs.1000/- had in fact been paid to the original vendor Gajendra Singh and the failure on the part of the appellant Radhey Shyam to produce the said registered sale deed before the trial court though he was very much impleaded as defendant immediately after filing of the suit clearly shows that he withheld the said document from the court for the reasons best known to him and, therefore, he was not a bona fide purchaser without notice and his case was, therefore, not covered by the exception of Section 19(b) of the Act. Mr. Mandhana further submitted that even assuming that the said appellant could raise the plea about the readiness and willingness of the plaintiff, the fact remains that there was not only specific averment in the plaint in para 4 and 5 of the plaint that plaintiff was willing to perform his part of the contract and in fact the plaintiff had paid full consideration of Rs.500/- to the original vendor and had offered and

requested the original vendor to execute the sale deed by purchasing the stamp duty and the trial court had also found that the plaintiff was ready and willing to perform his part of the contract, therefore, there was no force in the submission of the learned counsel for the appellant that the plaintiff was not ready and willing to perform his part of the contract and his case was, therefore, hit by Section 19(b) of the Specific Relief Act, 1963. He, therefore, submitted that the decree awarded by the two courts below on concurrent findings was justified and the present appeal deserve to be dismissed with costs.

Having heard the learned counsel at length and given my thoughtful consideration to the facts, pleadings and record of the case, this Court is of the opinion that this second appeal has no force and the same deserves to be dismissed.

It is true that the original vendor Gajendra Singh neither filed a written statement to the plaint before the trial court nor otherwise raised any dispute as to readiness and willingness of the plaintiff Brijendra Singh to perform his part of the contract, though the written statement to the plaint was filed only by contesting defendant Radhey Shyam the subsequent purchaser he has also not raised any objection in this regard in his written statement and, therefore, apparently though no specific issue has been framed by the trial court with regard to readiness and willingness on the part of plaintiff, yet the fact remains that in view of specific averments made by the plaintiff in the plaint supported by his statement on oath before the court, the court has given a specific finding in favour of plaintiff about his readiness and willingness to

perform his part of the contract. The trial court has specifically held in para 14 of its judgment while granting relief to the plaintiff that the plaintiff had paid full money in pursuance of the said agreement to sell which was executed on 12.5.1980 and the subsequent sale deed executed in favour of appellant Radhey Shyam was illegal as he was not a bona fide purchaser without notice, therefore, this finding of fact upheld by the first Appellate Court also cannot be upset at least there is no basis before this Court to reverse the same at the instance of present appellant. Therefore, this is beyond pale of doubt that even though the said appellant in law could be held entitled to raise this plea against the plaintiff about his readiness and willingness in view of the aforesaid cited judgments of Hon'ble Supreme Court, on the ground level neither said appellant raised this objection in the written statement nor produced any material before the trial court to show that the plaintiff was not ready and willing to perform his part of the contract. In fact the conduct of the said appellant Radhey Shyam in denial of his signatures on the said agreement to sell and even his vakalatnama before the first Appellate Court cannot be said to be above board and, therefore, the finding of the courts below that he was not a bona fide purchaser without notice appears to be justified and correct, therefore, the said findings of the courts below are upheld.

That as far as validity of the original agreement to sell executed on 12.5.1980 by the original vendor Gajendra Singh in favour of plaintiff Brijendra Singh is concerned the veracity of the same has never been doubted by the courts below and this has also come on record that the plaintiff had in fact paid the full consideration for the transfer of said property in his favour and the sum

of Rs.500/- is to be paid to the original vendor and the possession of the said land had also been handed over to the plaintiff Brijendra Singh. Therefore, the subsequent execution of alleged registered sale deed on 11.10.1982 in favour of defendant Radhey Shyam which document was never brought before the court though it was a fact within the knowledge of both defendants Gajendra Singh and Radhey Shyam only and the said document was also in possession of defendant Radhey Shyam, the present appellant for the reasons best known to them, therefore, drawing an adverse inference against them the courts below were justified in holding the said sale deed illegal. The said sale deed executed for the sum of Rs.1000/- in the face of statement of Gajendra Singh that he had agreed to sell the said land to the defendant Radhey Shyam for a sum of Rs.2000/- also castes a serious doubt about the validity of the said sale deed as against this agreement to sell executed by the original vendor Gajendra Singh Ex.1 on 12.5.1980 stood well proved and corroborated by all the witnesses who appeared in support of the plaintiff including Pw.3 Sughad Singh, the Sarpanch of the village who is said to have attested the said agreement to sell also with his seal. Consequently, this Courts finds no force in the present second appeal and the decree and judgment of the courts below deserve to be upheld.

The present appeal is accordingly dismissed with costs which is assessed at Rs.1000/-.

(Dr.VINEET KOTHARI),J.

VS/